From: Quin Blackburn
To: Microsoft ATR
Date: 1/26/02 1:03pm
Subject: Microsoft Settlement

To whom it may concern:

I am writing as a citizen concerned about the proposed final judgement between the United States and the Microsoft Corporation. I am a Design Engineer in California, with a significant background in computers and programming. I am also a user of Unix, Linux, and other competing operating systems, and therefore I have been exposed to how Microsoft has maintained and extended its monopoly, and I feel that I have been negatively effected by their activities.

While the judgement seems to address a number of the activities that Microsoft has used to hold and extend their monopoly, I think it has a number of weaknesses that will prevent it from accomplishing its purpose. The most likely result I see of approving this agreement is that Microsoft will continue their anticompetitive practices for several more years, followed by another lengthy antitrust trial. The irony is see is that in some cases they may use the proposed judgement as justification for their anticompetitive actions, as it specifically allows some of them to continue.

In section III parts A and B, the intent seems to be to allow OEMs to use Microsoft and competing products freely, without allowing Microsoft to take action to prevent them from doing so. However, it leaves Microsoft ample opportunity to continue to engage in anticompetitive practices. III.A.2 says that Microsoft cannot retaliate against an OEM for shipping computers that have a competing operating system on them, in addition to Microsoft's operating system. However, if the OEM ships any computers that have only the competing operating system, then retaliation is allowed. In effect, this can be read as requiring the OEM to put a Microsoft operating system on all the machines they ship.

Section III.B also specifies Covered OEMs for many of the protections. There are a great many computer manufacturers in this country and abroad, but it seems that only 20 will be protected.

Another thing I notice is that there is no mention of bundled products. This strikes me as allowing them to give discounts on seperate packages, like Microsoft Office, to vendors that behave the way Microsoft wants them to with regard to their operating systems products. These provisions have been used in previous OEM agreements. Since a large percentage of personal computers ship with an office package, this seems to give them a significant loophole to favor certain vendors without changing their cost schedule for their operating system products.

It strikes me as odd that there was no mention of Microsoft's applications, specifically Microsoft Office, in the proposed judgement.

While the trial was based on their operating system monopoly, they have a significant monopoly in the standard office application market that they use synergistically with their operating system monopoly to prevent competition in both areas. I believe that the findings of fact mentioned that they used the threat of withholding Microsoft Office for Macintosh as a lever against the Apple Corporation. The applications are used to support the operating system monopoly, because the lack of a version of Microsoft Office, as the most common office suite of applications, for competing operating systems is a large part of the "Applications barrier to entry" for those systems. The operating system monopoly is used to support the applications monopoly largely by bundling. Microsoft can afford to charge less for their Office suite because they are sellling it with another product, the operating system.

The proposed final judgement makes no attempt to address the applications monopoly, which, while unfortunate, is understandable since the trial concerned their operating systems only. However, it should address how they use their applications to the support of their operating system monopoly. The disclosure provisions should include the APIs and file formats for Microsoft Office, so that competing operating systems can have a fully compatible office suite. The Operating System licensing sections need to mention associated licenses, so that Microsoft doesn't use discounts on one product in lieu of the other.

The disclosure of the APIs, under section III.D, is done via the Microsoft Developer Network. While greater disclosure would aid competition, the choice of MSDN is questionable. In order to use MSDN, a developer needs to accept a "Click Through" agreement drafted by Microsoft. Having wanted to support a Microsoft file format in a competing operating system, I ran afoul of that agreement, which disallowed me from doing so. Indeed, the proposed final judgement only requires the disclosure "for the sole purpose of interoperating with a Windows Operating System Product". Since the entire intent of the judgement is to encourage competition to the Microsoft Windows monopoly, allowing the disclosure only to users of Windows, and for products that only run on Windows seems to completely defeat the purpose. This disclosure will only strengthen the Windows monopoly.

One significant thing I see lacking in the proposed judgement is any sort of penalty. The Microsoft Corporation has been ruled to have broken the law, but the judgement does nothing to "deny to the defendant the fruits of its statutory violation". At best, the judgement simply tells them not to do it again. There seems to be no reason for Microsoft not to continue its anticompetitive activities, since past transgressions of the law have not been penalized, they have no reason to believe that future ones will be. The judgement gives no means of enforcing even its own requirements, save returning to the courtroom and starting this process over from the beginning.

At the risk of destroying my credibility, I have to say that Microsoft

works in its own interests alone. They have no interest in competition, and no interest in or respect for the law. They will not follow the intent of an agreement, only the strict letter of it in their most favorable interpretation. If the judgement is not airtight, Microsoft will willfully continue their practices, citing any weakenesses in the agreement as allowing them to do so. The Microsoft Corporation has been convicted of having undue power and an agreement that has any less power will simply be pushed aside like any other competitor to their business.

Also, at greater risk, I would like to note that Microsoft has in the past hired marketing/PR firms which would write a large number of letters from "concerned citizens" in favor of Microsoft. I would hazard a guess that you have a significant number of these letters that have been commissioned in the interests of interfering with the legal process in their own favor.

Thank you for your time,
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